

Claims 5, 10, 11 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borron et al. in view of Nicholson. As stated in previous Official Actions, Borron et al. teach a composition comprising a purified recombinant SP-A that is lipid-free and contained in buffer (considered a carrier) at neutral pH.

Borron et al. do not teach that the SP-A is in powder form.

Nicholson teaches that freeze-drying (lyophilizing) enhances the stability and shelf life of protein products (see first line of abstract, paragraph bridging pp. 69-70 and 2nd paragraph p. 70). The lyophilization process results in a powder form of a protein.

RESPONSE

Applicants respectfully traverse this rejection. The Examiner has not shown a *prima facie* case of obviousness with respect to the presently rejected claims.

To establish a *prima facie* case of obviousness, the PTO must satisfy three requirements. First, the prior art relied upon, coupled with the knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference. *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Second, the proposed modification of the prior art must have had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the

invention was made. *Amgen Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991). Lastly, the prior art references must teach or suggest all the limitations of the claims. *In re Wilson*, 165 USPQ 494, 496 (C.C.P.A. 1970).

The Examiner has not provided any "suggestion or incentive that would have motivated the skilled artisan to modify" the Borron et al. reference with the teachings of the Nicholson reference as required by *In re Fine*.

In particular, the Examiner has alleged that the Nicholson et al. reference "teaches that freeze-drying (lyophilizing) enhances the stability and shelf life of protein products. The lyophilization process results in a powder form of a protein." However, the Nicholson reference contains no disclosure whatsoever regarding protein products, much less any disclosure regarding recombinantly prepared surfactant proteins such as are presently claimed.

Instead, the paragraphs of Nicholson cited by the Examiner (i.e. the abstract, the paragraph bridging pages 69-70 and the 2nd paragraph on page 70) merely teach the prediction of storage stability of lyophilized products generally. As such, the Examiner has not pointed to any teaching by Nicholson that would motivate the skilled artisan to modify the Borron et al. reference with the teachings of the Nicholson reference.

Therefore, a person of ordinary skill in the art clearly would not have been motivated to combine the teachings of the Borron et al. reference with the teachings of the Nicholson reference. As such, the Examiner has failed to establish a *prima facie* case of obviousness against pending claims 5, 10, 11 and 16.

Accordingly, applicants respectfully request that the Examiner reconsider and withdraw the rejection of these claims and allow them to proceed to grant.

2. Objection to claims 6-9, 12-13, 15 and 17

The Official Action states that claims 6-9, 12-13, 15 and 17 are objected to but would be allowable if rewritten into independent format.

Applicants thank the Examiner for this indication of allowable subject matter. Claims 6-9, 12-13, 15 and 17 have not been amended at this time, however, because applicants respectfully submit that the arguments presented in section 1 above have overcome the rejection of the base claims.

Accordingly, applicants respectfully request that the Examiner reconsider and withdraw the objection to claims 6-9, 12-13, 15 and 17.

3. Allowability of claims 18-29

Applicants thank the Examiner for this indication of allowed subject matter.

CONCLUSION

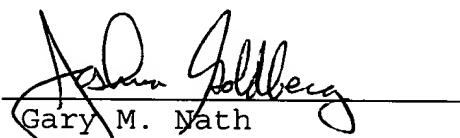
In view of the foregoing, applicants respectfully request the Examiner to allow all claims pending in this application.

If the Examiner has any questions or wishes to discuss this matter, the Examiner is welcomed to telephone the undersigned attorney.

Respectfully submitted,

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